



## **THE MACK FIRM**

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July 14, 2023

### **VIA ECF**

Honorable Jessica S. Allen, U.S.M.J.  
U.S. District Court for the District of New Jersey  
Martin Luther King Jr. Building & U.S. Courthouse  
50 Walnut Street  
Newark, New Jersey 07102

**Re: *White, et al. v. Samsung Electronics America, Inc., et al.***  
**Case No. 17-1775 (MCA)(JSA)**

Dear Magistrate Judge Allen:

In accordance with Your Honor's Amended Scheduling Order of May 8, 2023, D.E. 223, the parties respectfully submit this joint status letter, addressing the status of fact discovery and providing the parties' proposed schedules for class and merits expert discovery.

### **I. Discovery**

#### **A. Discovery Protocols**

The parties reached agreement on proposed orders regarding Privilege Log Content and Timing, Fed. R. Evid. 502(d), Electronically Stored Information, and Expert Discovery. The parties submitted the proposed orders on June 5, 2023, D.E. 224, and the Court entered the orders on June 7, 2023. D.E. 225, 226, 227, 228.

#### **B. Initial Disclosures**

On June 14, 2023, Plaintiffs requested that Samsung amend its initial disclosures to comply with the Court's directive that "[m]erits and class-based fact discovery shall proceed simultaneously." D.E. 223. Samsung's initial disclosures are currently limited to Plaintiffs' individual claims only. Samsung has indicated that it will amend its initial disclosures, and expects to serve its amended initial disclosures in advance of the July 24 status conference.

#### **C. Written Discovery**

On May 9, 2023, Plaintiffs served their First Set of Requests for Production of Documents. Samsung served its responses and objections on June 8, 2023. The parties met and conferred regarding the responses on June 27, 2023 and will continue to meet and confer consistent with Paragraph 9 of the Court's Amended Scheduling Order, D.E. 223.

Honorable Jessica S. Allen, U.S.M.J.

July 14, 2023

Page 2

Samsung served its First Set of Requests for Production and First Set of Interrogatories to Plaintiffs on May 22, 2023. Plaintiff White served initial responses and objections on June 28, 2023 and will supplement certain responses by July 28, 2023, as agreed by the parties. Plaintiff Cauley's responses and objections are due, by agreement of the parties, on July 21, 2023.

On May 30, 2023, Plaintiffs served their First Set of Interrogatories to Samsung. Samsung served responses and objections on June 29, 2023.

#### **D. Depositions**

On June 12, 2023, Plaintiffs requested deposition dates for Randy Chung and Khaled Abuali, to occur the weeks of July 17 or July 24. Randy Chung submitted a declaration in support Samsung's motion to compel arbitration, D.E. 143-2, on May 22, 2020. Khaled Abuali submitted a declaration in support of a later-filed motion to compel arbitration, D.E. 181-8, filed on May 4, 2021. In connection with those depositions, Plaintiffs also requested production of documents responsive to RFP Nos. 4, 5, 14-16,<sup>1</sup> and any other responsive custodial files from these two

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<sup>1</sup> Specifically, Plaintiffs requested documents responsive to RFP Nos. 4, 5, and 14-16, reproduced here for ease of reference:

**Request No. 4:** For each version of each process in effect during the Relevant Period, Documents, including video recordings and screen shots, sufficient to show the terms and conditions or other documents shown to a User if they select "view details" during the User Engagement Flow process, as described in Paragraph 5 of the Abuali Declaration and Paragraph 5 of the Chung Declaration, including dated screen shots reflecting each step of these processes.

**Request No. 5:** For each version of each process in effect during the Relevant Period, Documents, including video recordings and screen shots, sufficient to show the terms and conditions, policies, or other documents presented to a User if they opt out during the User Engagement Flow, as described in Paragraph 7 of the Abuali Declaration and Paragraph 7 of the Chung Declaration, including dated screen shots reflecting each step of these processes.

**Request No. 14:** Documents sufficient to show all categories maintained by Samsung in its database showing "the choices and consents that the specific user selected" as described in Paragraph 9 of the Abuali Declaration and paragraph 9 of the Chung Declaration.

**Request No. 15:** Documents reflecting the factual bases for the assertions set forth in the Abuali and Chung Declarations.

Honorable Jessica S. Allen, U.S.M.J.

July 14, 2023

Page 3

individuals, by no later than July 10. The parties met and conferred regarding Plaintiffs' deposition request on June 27, 2023 and will continue to meet and confer consistent with Paragraph 9 of the Court's Amended Scheduling Order, D.E. 223.

## II. Scheduling

Each party's respective proposed schedule for class certification and summary judgment motions and expert discovery is set forth below.

### A. Plaintiffs' Proposed Schedule

Plaintiffs respectfully submit that class certification should precede summary judgment motions as proposed below. It is most efficient for merits determinations to be decided after the Court has determined whether the elements required for class certification are met, as the Court's ruling on class certification will affect the scope of merits issues to be briefed at summary judgment.

Scheduled Event	Plaintiffs' Proposed Date
Motion for Class Certification (with opening expert reports)	By no later than June 7, 2024
Opposition to Motion for Class Certification (with opposing expert reports)	August 9, 2024
Reply in Support of Motion for Class Certification (with reply expert reports)	September 13, 2024
Opening Merits Expert Reports and Disclosures	October 4, 2024
Rebuttal Merits Expert Reports and Disclosures	November 8, 2024
Rule 56 Motion(s); <i>Daubert</i> Motion(s) <sup>2</sup>	Motion: By no later January 15, 2025 Opposition: Within 30 days of motion Reply: Within 21 days of opposition

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**Request No. 16:** To the extent not produced in response to Request No. 15, all relevant business records referenced in paragraph 1 of the Abuali Declaration and paragraph 1 of the Chung Declaration.

<sup>2</sup> *Daubert* Motions shall be limited to 3 per side over the course of the entire case.

Honorable Jessica S. Allen, U.S.M.J.

July 14, 2023

Page 4

## B. Defendant's Proposed Schedule

Samsung respectfully submits that a schedule permitting simultaneous filing of Plaintiffs' anticipated motion for class certification and Samsung's anticipated motion for summary judgment would be more efficient because it would provide the Court an opportunity to resolve the key issue in dispute—namely, whether Samsung intentionally intercepted the contents of Plaintiffs' communications without a party's consent—before or in conjunction with considering class certification issues. This approach would allow the Court to reach the several straightforward merits issues that would be dispositive regardless of whether and how class certification is decided. Indeed, this approach is supported by Judge Arleo's decision on Samsung's motion for reconsideration, which emphasized that “only one claim remains, and brief discovery could more conclusively establish whether Defendants were in fact a party to the communications in dispute, such that application of the party exception could be raised again at the summary judgment stage.” ECF No. 131, at 5.

Samsung's proposed schedule would also be more efficient and require less time to complete because it would allow the parties to conduct class and merits expert discovery simultaneously, followed by briefing of class certification and summary judgment motions.

Scheduled Event	Defendant's Proposed Date
Opening Expert Reports and Disclosures	April 29, 2024
Rebuttal Expert Reports and Disclosures	June 10, 2024
Expert Depositions	July 8, 2024
Motion for Class Certification; Rule 56 Motion(s)	The parties shall serve, <u>but not file</u> , Class Certification and Rule 56 Motion(s) by no later than September 6, 2024
Opposition to Motion for Class Certification; Opposition(s) to Rule 56 Motion(s); <i>Daubert</i> Motion(s)	The parties shall serve, <u>but not file</u> , Oppositions to Class Certification and Rule 56 Motion(s), and <i>Daubert</i> motions by November 5, 2024
Reply in Support of Motion for Class Certification; Replies in Support of Rule 56 Motion(s); Opposition(s) to <i>Daubert</i> Motion(s)	The parties shall serve, <u>but not file</u> , Replies in Support of Class Certification and Rule 56 Motion(s), and Opposition(s) to <i>Daubert</i> motions by December 5, 2024
Replies in Support of <i>Daubert</i> Motion(s)	The parties shall serve, <u>but not file</u> , Replies in Support of <i>Daubert</i> motions by January 10, 2025
E-filing	The parties shall thereafter coordinate filing all Class Certification, Rule 56 and <i>Daubert</i> Motions, Oppositions and Replies, such that the parties complete those filings by January 15, 2025

Honorable Jessica S. Allen, U.S.M.J.

July 14, 2023

Page 5

Respectfully submitted,

s/ Michael R. McDonald

Michael R. McDonald

Attorneys for Defendant Samsung Electronics  
America, Inc.

s/ Mack Press

Mack Press

Attorney for Plaintiffs

Enclosures

cc: All Counsel of Record (via ECF)